



DEPARTMENT OF VETERANS AFFAIRS

8230-01

38 CFR Part 3

RIN 2900-AO38

Dependency and Indemnity Compensation Payable to a Surviving Spouse with One or More Children Under Age 18

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this final rule to amend its adjudication regulation regarding the additional statutory amount of Dependency and Indemnity Compensation (DIC) payable to a surviving spouse with one or more children below the age of 18. The Veterans' Compensation Cost-of-Living Adjustment Act of 2006 redesignated the statutory section cited in VA's governing regulation. This amendment is necessary to conform the regulation to the statutory provision.

DATES: Effective Date: This final rule is effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Nancy A. Copeland, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461-9685. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

The Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1311, Dependency and indemnity compensation [DIC] to a surviving spouse, by adding a subsection (e) which provides a \$250 increase in the monthly rate of DIC to which a surviving spouse with one or more children below the age of 18 is entitled. Sec. 301, Pub. L. 108-454, 118 Stat. 3610. This statutory change was incorporated as 38 CFR 3.10(e)(4). See 71 FR 44915, Aug. 8, 2006.

However, because 38 U.S.C. 1311 already contained a subsection (e), Congress amended 38 U.S.C. 1311 by redesignating the new subsection (e) as subsection (f). See Sec. 4, Pub. L. 109-361, 120 Stat. 2063. To reflect this statutory technical amendment, VA is amending the first sentence of 38 CFR 3.10(e)(4) to change the citation from 38 U.S.C. 1311(e) to 38 U.S.C. 1311(f).

We are also removing the authority citation at the end of paragraph (e). This citation is unnecessary because the regulation text itself contains the correct statutory citation and the authority citation at the end of § 3.10 includes § 1311 in its entirety.

Administrative Procedures Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment. The change made by this rule merely reflects a minor statutory technical amendment. Therefore, VA is issuing this rule as a final rule.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of

Management and Budget (OMB), as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.109, Veterans Compensation for Service-Connected Disability, and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 3, 2012, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: July 5, 2012

Robert C. McFetridge,
Director of Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3 – ADJUDICATION

Subpart A-Pension, Compensation, and Dependency and Indemnity

Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.10 by:

- a. In paragraph (e)(4), removing “38 U.S.C. 1311(e)” and adding, in its place, “38 U.S.C. 1311(f)”.

- b. Removing the authority citation at the end of paragraph (e)(4).

[FR Doc. 2012-16810 Filed 07/09/2012 at 8:45 am; Publication Date: 07/10/2012]